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FILED
MAY 14 2007
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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C07-02544 VRW

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 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
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Case No.

**COMPLAINT FOR DAMAGES RE
 MEDICAL NEGLIGENCE AND
 DEMAND FOR JURY TRIAL**

NAYELI MENDEZ and HECTOR
 MARTINEZ

Plaintiffs,

vs.

UNITED STATES OF AMERICA

Defendant.

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 19 Plaintiffs, NAYELI MENDEZ and HECTOR MARTINEZ, complain of defendant for
 20 a first cause of action for medical negligence and allege:

21 1. Plaintiffs NAYELI MENDEZ and HECTOR MARTINEZ, are residents of the
 22 City of Oakland, California, County of Alameda.

23 2. At all times herein mentioned Philip Bannawart, MD was employed at the
 24 LA CLINICA DE LA RAZA-FRUITVALE HEALTH PROJECT (hereinafter "La Clinica") in
 25 Oakland, California. Philip Bannawart, MD was a physician duly licensed to practice his
 26 profession within the United States.

27 3. At all times herein mentioned La Clinica was a federally supported health
 28 center under the Federally Supported Health Centers Assistance Act of 1992, as amended,

1 operating in Oakland, California.

2 4. At all times herein mentioned the individual listed in paragraph 2 was
3 an employee of defendant United States of America acting within the course and scope of his
4 employment.

5 5. Prior to October 8, 2005 and continuing thereafter NAYELI MENDEZ and her
6 baby were evaluated, examined, diagnosed and treated by the personnel of La Clinica,
7 1515 Fruitvale Avenue, Oakland, California 94601.

8 6. On or about October 8, 2004, plaintiff NAYELI MENDEZ presented herself to
9 Alta Bates Medical Center for the purposes of delivering her baby. La Clinica and its
10 employee, Philip Bannawart, MD negligently and carelessly evaluated, examined, diagnosed
11 treated and delivered plaintiff NAYELI MENDEZ and her baby, causing injury and damage to
12 baby Isaac Mendez resulting in his death.

13 7. At all times mentioned herein, Philip Bannawart, MD failed to exercise the
14 degree of care and skill required of physicians at the time and under like and similar
15 circumstances in the delivery of plaintiffs' baby, Isaac Mendez.

16 8. As a result of defendant's negligence, plaintiffs NAYELI MENDEZ and
17 HECTOR MARTINEZ suffered the death of their son Isaac Mendez, were emotionally
18 traumatized and continue to suffer serious emotional distress.

19 9. The general or non-economic damages have a value in excess of \$500,000.00.

20 10. Plaintiff filed a claim with the United States Department of Health and Human
21 Services on or about May 8, 2006. On November 16, 2006 the Department of Health &
22 Human Services denied plaintiffs' administrative tort claim requiring plaintiffs to file suit
23 within six months pursuant to 28 U.S.C. § 2401(b). Plaintiffs have complied with all
24 applicable claim statutes and have exhausted all their administrative remedies as a prerequisite
25 to the commencement of this civil action.

26 WHEREFORE, plaintiffs demand judgment against the defendant in the amount of
27 \$500,000.00, as well as costs incurred, reasonable attorney's fees, and such other and further
28 relief as this Court may deem just and proper under the circumstances.

1 Plaintiffs demand a trial by jury.
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3 DATED: May 14, 2007

Respectfully submitted,

4 GWILLIAM, IVARY, CHIOSSO,
5 CAVALLI & BREWER
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7 By:

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9 STEVEN J. BREWER
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